

**Fair Credit Reporting Act (FCRA)
as amended by the
Fair and Accurate Credit Transaction Act (FACTA) of 2003**

Interim Examination Guidance

The Fair and Accurate Credit Transactions Act (FACTA) of 2003, amending the Fair Credit Reporting Act (FCRA), was enacted on December 4, 2003. Among other provisions that became effective on December 1, 2004, or earlier, are the provisions listed below. Examiners should immediately include a review of compliance with these provisions in any consumer compliance examinations. The following provisions are listed in order of the FCRA section, with reference to the FACTA sections.

- I. Protection of Medical Information (FCRA § 604(g)(4); FACTA § 411): A financial institution that has received medical information shall not redisclose it to any other person, except as necessary to carry out the purpose for which the information was initially disclosed. Although this “sharing” provision became effective 180 days after December 4, 2003, the provisions of section 411 of the FACT Act that define when a financial institution may obtain and use medical information in credit transactions will become effective when implementing rules are issued. In the interim, the prohibition on redisclosing medical information is applicable.

Ensure that the financial institution does not redisclose medical information except as allowed by the statute. This should be coordinated with the evaluation of the institution’s compliance with Regulation P (12 CFR 216).

- II. Fraud and Active Duty Alerts (FCRA § 605A(h)(2)(B); FACTA § 112): Consumers who suspect that they may be the victims of identity theft may place initial or extended fraud alerts on their consumer reports. Members of the armed services that are called to active duty may also place active duty alerts on their accounts. These alerts are designed to prevent identity theft. No prospective user of a consumer report that includes an alert may: establish a new credit plan or extension of credit in the name of the consumer; issue an additional card on an existing account; or increase a credit limit, unless the user follows effective policies and procedures to verify the consumer’s identity.

Review the financial institution’s procedures to ensure that when a consumer report containing such an alert is obtained, that appropriate steps are taken to verify the consumer’s identity.

- III. Rights for Identity Theft Victims (FCRA § 609(e); FACTA § 151): Within 30 days after receiving a request from an identity theft victim, a business entity that has entered into a transaction with a person who has allegedly made an unauthorized use of the victim’s identity, must provide copies of the application

and the transaction records to the victim, federal/state/local authorities specified by the victim, or any law enforcement agency investigating the identity theft and authorized by the victim to obtain such records. Prior to disclosing this information, the business entity generally must ensure that the person making the request provides appropriate identification to ensure that the business entity is disclosing this information to the actual victim. The requestor generally must also provide a copy of a police report evidencing a claim of identity theft or a valid affidavit of a claim that is acceptable to the business entity. This provision became effective 180 days after December 4, 2003.

Review the financial institution's practices and procedures to ensure that information about fraudulent accounts or transactions is appropriately disclosed upon request and after provision of appropriate documentation by requestor.

- IV. Disclosure of Credit Scores (FCRA § 609(g); FACTA § 212): Any person who makes or arranges loans using consumer credit scores in connection with an application for a loan that is secured by 1 to 4 units of residential real property shall provide the following as soon as reasonably practicable: the exact text of the required notice found in FCRA § 609(g)(1)(D) and FACTA § 212(c); the credit score and certain information about the score; and the name, address, and telephone number of each consumer reporting agency that provided a credit score used by the person in the transaction. This requirement applies only to loans that are for consumer purposes, such as purchasing or refinancing the dwelling, home equity loans and lines for consumer purposes, etc. The requirement does not apply when a consumer obtains a loan secured by their dwelling for non-consumer purposes, such as to finance a small business.

Ensure that the financial institution provides the appropriate credit score notice to consumers.

- V. Notice by Debt Collectors Regarding Fraudulent Information (FCRA 615(g); FACTA 155): This section applies to financial institutions that collect debts for third parties. If the collecting financial institution is notified that any information relating to the subject debt may be fraudulent or the result of identity theft, it must notify the third party of this fact, and upon request of the consumer, provide the consumer with all of the information to which the consumer would be entitled to dispute the debt.

Determine if the financial institution collects debts for third parties. If applicable, ensure policies and procedures are in place to notify the third parties when the financial institution learns that the debt in question may be the result of identity theft.

- VI. Prevention of Re-Pollution of Consumer Reports (FCRA § 623(a)(6) and 615(f); FACTA § 154): Victims of identity theft may block a consumer reporting agency from including information about allegedly fraudulent accounts on their consumer reports. In turn, the consumer reporting agency will inform the furnisher of this

information about the block. Furnishers must establish and follow reasonable procedures to ensure that this information is not refurnished to the consumer reporting agency, thus “re-polluting” the victim’s consumer report. This section of the FACTA also prohibits a financial institution from selling, transferring, or placing for debt collection a debt caused by an identity theft.

Review the financial institution’s policies and procedures regarding (1) the furnishing of information to consumer reporting agencies to ensure that items disputed based on identity theft are not re-reported to the consumer reporting agency and (2) the selling, transferring, or placing for debt collection debts that are caused by identity theft.

- VII. Notice of Furnishing Negative Information (FCRA § 623(a)(7); FACTA § 217; 12 CFR 222): Financial institutions must provide consumers with a disclosure either before negative information is reported to a nationwide consumer reporting agency, or within 30 days after reporting the negative information. This disclosure need not be given each time negative information is provided, so long as it has been provided to the consumer at least once. The notice may not be included in the initial disclosures provided under Section 127(a) of the Truth in Lending Act. The disclosure does not need to be given when negative information is reported to a consumer reporting agency that does not meet the statutory definition of a “nationwide consumer reporting agency,” which does not include local consumer reporting agencies and check verification services. The definition does apply to the three primary consumer reporting agencies: Experian, TransUnion, and Equifax.

Ensure that the required negative information notice is provided to consumers. Financial institutions have flexibility in complying with this provision by either providing an advance notice to consumers, or notifying the consumer within 30 days after providing negative information to a nationwide consumer reporting agency. Some institutions may choose to provide the advance notice to all customers as an abundance of caution; however, the statute only requires that the notice be given to consumers about whom negative information is reported. Violations should only be cited if the institution reported negative information about a consumer after December 1, 2004, without providing the appropriate notice to the consumer.

- VIII. Disclosure of Reinvestigation Results (FCRA § 623(b); FACTA § 314(b)): Financial institutions must investigate errors that are reported by consumers regarding information that the financial institution has provided to a consumer reporting agency. If the financial institution cannot verify the accuracy of the information, then it must delete, modify, or block the information from reporting.

Ensure that the financial institution’s policies and procedures for furnishing data to consumer reporting agencies includes provisions for prompt investigation of disputes and reporting of the outcome of investigations.